M/L 357
18.03.2025
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

WPA 21054 of 2019

Sabina Khatun
Vs.
The State of West Bengal & Ors.

Mr. Milan Chandra Bhattacharya, Sr. Adv.
Ms. Sulagna Bhattacharya
... for the Petitioner.

Mr. Pantu Deb Roy, Ld. AGP
Mr. Panna Lal Bandyopadhyay
... for the State.

Affidavit of service filed on behalf of the petitioner in Court today be kept with the record.

The petitioner is running a restaurant under the name and style of *'MA TANJILA'* from a site under Ward No.7 of Rampurhat Municipality.

The petitioner had applied online to have a license for retail sale of liquor from the said site.

The *Collector of Excise*, Birbhum, the respondent no.4 herein, by the impugned order bearing *Memo No. 974/E* dated September 19, 2019 has rejected the said application holding that *Sri Sri Kali Tara Panchadeb Mandir* (*"Mandir"* in short) is situated 890 ft. away from the proposed site; as such, it offends Rule 8 of the *West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants)* Rules, 2003 (hereinafter referred to as *'the said Rules of 2003'*).

Mr. Milan Chandra Bhattacharya, learned senior advocate for the petitioner submits that in terms of Paragraph (ii) of the explanation appended to Rule 8 of the said Rules of 2003, a traditional place of public worship is required to be in existence for a period of *not less than twenty years* but it would appear from the order impugned that the *Mandir* is run by a trust registered on March 14, 2018; therefore, the *Mandir* does not qualify the requirement for being a traditional place of public worship; and the finding of the *Collector* in the said order that the *Mandir* was established in the year 1978 is completely erroneous. He further submits that *no* opportunity was given to the petitioner to demonstrate that the *Mandir* was constructed after she had applied for license.

Mr. Pantu Deb Roy, learned AGP submits that though the writ petition, in view of the availability of alternative relief by way of appeal, is *not maintainable* but the petitioner since is entitled to

be present at the time of inspection of the site, he is not pressing hard on the said point. He however suggests that the petitioner may be afforded an opportunity to demonstrate that the *Mandir* does not qualify the requirement for being a traditional place of public worship as defined under the said Paragraph (ii) of the said explanation.

Heard learned advocate(s) for the parties; perused the materials on record.

Rule 8 of the said Rules of 2003 puts the restrictions on grant of license at new sites. It mandates that no license for the retail sale of liquor or any other intoxicant at a new site shall be granted where the new site is situated in the vicinity of an educational institution recognized by the State Government or the Central Government, or any college or institution affiliated to any University established by law, traditional place of public worship and hospital for public use.

The Paragraph (ii) of the explanation appended to the said Rule 8 defines *traditional place of public worship* which runs as follows:-

> "…. **8. Restrictions on grant of license at certain new sites.–**
>
> *(ii)* For the purpose of this rule, traditional place of public worship means a place of public worship that is in existence for a period of not less than twenty years, or as per Section 5 of the West Bengal Religious Building and Places Act, 1985 (West Ben. Act XXXII of 1985) has taken prior permission of the Collector of the district if the place is outside the jurisdiction of Kolkata, or the Police Commissioner if the place is within the jurisdiction of Kolkata."

The order impugned records that the *Mandir* is situated within the offending distance but the trust which runs the *Mandir* was registered on March 14, 2018; therefore, *prima facie,* the age of the *Mandir* does not qualify the requirement to be a *traditional place of public worship* as defined under the above-quoted paragraph of the said explanation.

It further appears from the order impugned that the respondent no. 4 has taken the *Trust Deed* of the trust which runs the *Mandir* on record, which obviously signifies that the trustees of the said trust were given opportunity of hearing, but the same was not provided to the petitioner.

In the backdrop of the facts and circumstances discussed above, the order impugned is *not sustainable* and is accordingly set aside.

The respondent no.4 is directed to reconsider the application of the petitioner for grant of license for retail sale of liquor in accordance with the said Rules of 2003, *particularly* **Rule 8** thereof, after giving all concerned, an opportunity of hearing.

WPA 21054 of 2019 is disposed of with the above terms without any order as to costs.

Since no affidavit has been invited, the allegations made in the writ petition are deemed to have been denied by the respondents.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Biswajit Basu, J.)